

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 843 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

DECD. JAGATSINH FATEHSINH, THROUGH HEIRS & L.R.

Versus

PARVATIBEN HARISHCHANDRA, THROUGH HER HEIRS & L.R.

Appearance:

MR RN SHAH for Petitioners

MR KC SHAH for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 07/09/1999

ORAL JUDGEMENT

1. This is a Civil Revision Application under section 29(2) of the Bombay Rent Act at the instance of the original defendant-tenant.

2. The present revision arises under section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, wherein the jurisdiction of this Court is extremely limited. The Supreme Court has laid down

the scope and powers of the High Court while entertaining such revisions under section 29(2) of the Bombay Rent Act. The Supreme Court in the case of Patel Valmik Himatlal & Ors. Vs. Patel Mohanlal Muljibhai (1998(2) GLH 736) = AIR 1998 SC 3325), while approving and reiterating the principles laid down in its earlier decision in the case of Helper Girdharbhai Vs. Saiyad Mohmad Mirasaheb Kadri (AIR 1987 SC 1782), held that High Court cannot function as a court of appeal, cannot appreciate the evidence on record, cannot discard concurrent findings of fact based on evidence recorded by the courts below, and cannot interfere on grounds of inadequacy or insufficiency of evidence, and cannot interfere, except in cases where conclusions drawn by the courts below are on the basis of no evidence at all, or are perverse. A different interpretation on facts is also not possible merely because another view on the same set of facts may just be possible.

3. Only a few salient features and facts require to be noted.

4. The landlord had sued the tenant for a decree of eviction on the ground of arrears of rent exceeding 6 months under section 12 (3) of the Bombay Rent Act.

5. The defendant-tenant had raised a dispute as to standard rent within one month on receipt of the statutory notice issued by the landlord. Therefore, the case would not be covered under section 13 (3) (a) of the Rent Act.

6. It may be noted here that although the lower appellate court had discussed the application of section 12(3)(a), it did not apply this provision and has dealt with the case as if the same were covered under section 12 (3)(b) of the said Act.

7. The trial court after appreciating the evidence on record, dismissed the suit of the landlord on the ground that although the contractual and agreed rent was Rs. 30/- per month, the standard rent of the suit premises would be Rs. 20/- per month, and that therefore, the tenant would be covered by section 12 (3)(b) of the said Act, and that the tenant had deposited the amount then due and payable in the trial court at the rate of Rs. 20/- per month on the date of the first hearing (when the issues were framed). On this finding, the trial court dismissed the suit of the landlord.

8. The landlord preferred an appeal under section

29(1) of the Rent Act, which was allowed by the lower appellate court. Hence, the present revision by the tenant.

9. The only significant fact which requires to be noted here is that the lower appellate court disturbed and upset the finding of the trial court as to the correct standard rent. The lower appellate court found the standard rent of the premises to be Rs. 30/- per month as against Rs. 20/- per month found by the trial court. The appellate court thereafter came to a conclusion that even if the more beneficial provision of section 12 (3)(b) were applicable to the tenant, the tenant has not deposited the entire amount due till the date of the appellate decree in the court at the rate of Rs. 30/ per month. This finding gives rise to a contention on the part of the learned counsel for the petitioner to the effect that the standard rent determined by the trial court at Rs. 20/- per month was raised by the lower appellate court at Rs. 30/- per month only by the appellate judgment and decree, and that therefore the appellate court ought to have granted time to the tenant to pay up the difference. No doubt, this submission finds support from two decisions of this Court reported at 9 GLR P. 48 and 9 GLR P. 323. It would therefore appear that the lower appellate court ought to have granted time to the tenant to deposit the deficit of the arrears of rent calculated on the basis of the enhanced figure of standard rent at Rs. 30/- per month.

10. The tenant would benefit by the aforesaid position in law only if he were in default on account of the standard rent being raised from Rs. 20/- per month as determined by the trial court to Rs. 30/- per month as determined by the lower appellate court, i.e. on account of the difference only.

11. However, on the facts of the case, the lower appellate court has arrived at a finding of fact, in para 21 of the judgment, that even at the rate of Rs. 20/per month (which is the standard rent determined by the trial court), the tenant has not made the deposit in court regularly as required by section 12 (3)(b) of the Rent Act. The lower appellate court has on the facts of the case, pointed out various defaults which are far numerous and of far larger intervals which could be casually overlooked. Thus, it is found that the question of granting time to deposit the deficit amount at the enhanced rate of standard rent would not assist the tenant when on the facts of the case, it is found that numerous defaults have been committed by the tenant in

making the regular deposits during the course of the appeal, even at the standard rent determined by the trial court in favour of the tenant.

12. On the facts as found aforesaid, the lower appellate court was justified in holding that the tenant had lost protection of section 12 (3)(b) of the Bombay Rent Act and therefore, was justified in passing the decree of eviction. The judgment of the lower appellate court is therefore required to be upheld.

13. This revision is therefore dismissed. Rule discharged with no order as to costs. Interim relief vacated.

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